

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
Fleming Companies, Inc., et al.)	Case No. 03-10945 (MFW)
)	(Jointly Administered)
Debtors.)	
)	Re: Docket No. 12009

**APPELLANT KEMPS LLC'S STATEMENT OF THE ISSUES AND
DESIGNATION OF ITEMS TO BE INCLUDED
IN THE RECORD ON APPEAL**

Appellant Kemps LLC ("Kemps"), hereby submits this statement of the issues on appeal and its designation of items to be included in the record on appeal, in its appeal from the Order on Cross-Motion of the Post-Confirmation Trust for Declaratory Relief [Docket No. 11930] entered in this proceeding on October 20, 2005 in this Court, pursuant to Federal Rule of Bankruptcy Procedure 8006:

Statement of the Issues on Appeal

Did the Bankruptcy Court err in concluding that the claims and causes of action being asserted by the Post-Confirmation Trust (PCT) against James Green and Christopher Thorpe, officers of Reclamation Creditor Kemps LLC, are the property of the PCT and not the Reclamation Creditors Trust (RCT) under the terms of the Fleming Companies' confirmed plan of reorganization?

Designation of Items To Be Included in the Record on Appeal

Appellant Kemps hereby designates the following items to be included in the record for this appeal:¹

¹ Pursuant to Del. Bankr. LR 8006-1, a copy of each of the designated items is being delivered to the Clerk contemporaneously herewith.

- A. Motion of the Reclamation Creditors' Trust to (i) Enforce the Reorganization Plan and Confirmation Order, (ii) Enjoin the Post-Confirmation Trust from Pursuing Claims Against Employees of Reclamation Creditors to Recover RCT Assets from the Reclamation Creditor Employers, and (iii) Determine that the PCT's Claims Against Employees of Reclamation Creditors Constitute RCT Assets, with accompanying exhibits:

- (1) Disclosure Statement to Debtors' and Official Committee of Unsecured Creditors' Third Amended and Revised Joint Plan of Reorganization of Fleming Companies, Inc. and Its Filing Subsidiaries Under Chapter 11 of the United States Bankruptcy Code, pp. 29-31;
- (2) In re Fleming Companies Securities Litigation, Cross-Complaint and Original Complaint of the Post-Confirmation Trust and Original Answer of Defendants The Fleming Companies, the Post-Confirmation Trust and Core-Mark, Civ. Action No. 05-03-1530 (TJW), Case No. MDL-1530 (E.D. Tex.);
- (3) Revised Term Sheet to Resolve Objections to Debtors' Chapter 11 Plan and for Treatment of Reclamation Claims;
- (4) SEC Press Release: Grocery Wholesaler Fleming Companies Settles Fraud Charges with SEC, Dated September 14, 2004.

Date: August 25, 2005

Docket No.: 11559

- B. Response of Kemps LLC in Support of Motion of the Reclamation Creditors' Trust to (i) Enforce the Reorganization Plan and Confirmation Order, (ii) Enjoin the Post-Confirmation Trust from Pursuing Claims Against Employees of Reclamation Creditors to Recover RCT Assets from the Reclamation Creditor Employers, and (iii) Determine that the PCT's Claims Against Employees of Reclamation Creditors Constitute RCT Assets.

Date: October 4, 2005

Docket No.: 11818

- C. Amended Response of the Post-Confirmation Trust to Claim Ownership Motion of Reclamation Creditors Trust, and Cross-Motion of the Post-Confirmation Trust for Declaratory Relief, and accompanying exhibits:

- (a) Debtors' and Official Committee of Unsecured Creditors' Third Amended and Revised Joint Plan of Reorganization of Fleming Companies, Inc. and Its Filing Subsidiaries Under Chapter 11 of the United States Bankruptcy Code (excerpts);
- (b) First RCT Status Report and Notice of Payment of Class 3(B) TLV Reclamation Claims;
- (c) In the Matter of Fleming Companies, Inc., Order Instituting Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities

- Exchange Act of 1934, Making Findings and Imposing a Cease-and-Desist Order, Securities Act Release No. 8482;
- (d) In the Matter of Bruce Keith Jensen, Order Instituting Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings and Imposing a Cease-and-Desist Order, Securities Act Release No. 8487;
In the Matter of John K. Adams, Order Instituting Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings and Imposing a Cease-and-Desist Order, Securities Act Release No. 8484;
- (e) In the Matter of Dean Foods Company and John D. Robinson, Order Instituting Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings and Imposing a Cease-and-Desist Order, Securities Act Release No. 8486;
In the Matter of Digital Exchange Systems, Inc., Rosario Coniglio and Steven Schmidt, Order Instituting Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings and Imposing a Cease-and-Desist Order, Securities Act Release No. 8483;
In the Matter of Kemps LLC, f/k/a Marigold Foods, LLC, James Green and Christopher Thorpe, Order Instituting Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings and Imposing a Cease-and-Desist Order, Securities Act Release No. 8485;
- (f) Fleming Companies, Inc. et al., Reclamation Claim Summary by Claimant, November 21, 2003;
- (g) Press Release: Enron Reaches Settlement with JPMorgan Chase in Megaclaims Litigation Valued at \$1 Billion, dated August 16, 2005;
Press Release: Enron Reaches Settlement with Canadian Imperial Bank of Commerce in Megaclaims Litigation, dated August 5, 2005;
Press Release: Enron Reaches Settlement with Toronto-Dominion Bank in Megaclaims Litigation, dated August 16, 2005;
Press Release: Enron Reaches Settlement with Royal Bank of Scotland in Megaclaims Litigation, dated July 17, 2005;
Press Release: Enron Reaches Settlement with Royal Bank of Canada in Megaclaims Litigation, dated July 28, 2005;
- (h) Enrico Bondi v. Bank of America Corp. (In re Parmalat Secs. Litig.), Master Docket 04-MD-1653 (LAK), 05-CIV-4015 (LAK), Memorandum Opinion (S.D.N.Y. Aug. 5, 2005).

Date: October 13, 2005

Docket No.: 11889

D. Response of Kemps LLC in Opposition to the Cross-Motion of the Post Confirmation Trust for Declaratory Relief, and accompanying exhibit:

- (a) Kemps Limited Liability Company Agreement, § 17.1(a) & (d)

Date: October 12, 2005

Docket No.: 11864

E. Response of Reclamation Creditors Trust in Opposition to the Cross-Motion of the Post Confirmation Trust for Declaratory Relief, with accompanying exhibits:

- (1) SEC v. Shapiro, Civil Action No. 4:05cv364, Complaint filed Sept. 15, 2005 (E.D. Tex.);
- (2) December 10, 2004 e-mail from PCT special counsel, Kathy D. Patrick, to Mark Friedman;
- (3) December 21, 2004 letter from Mark J. Friedman to Robert A. Kors;
- (4) March 24, 2005 e-mail from Mark J. Friedman to Robert A. Kors

Date: October 12, 2005

Docket No.: 11866

F. Food Marketing Group, Inc.'s (A) Joinder to Motion of the Reclamation Creditors' Trust to (i) Enforce the Reorganization Plan and Confirmation Order, (ii) Enjoin the Post-Confirmation Trust from Pursuing Claims Against Employees of Reclamation Creditors to Recover RCT Assets from the Reclamation Creditor Employers, and (iii) Determine that the PCT's Claims Against Employees of Reclamation Creditors Constitute RCT Assets and (B) Response to PCT Cross-Motion.

Date: October 12, 2005

Docket No.: 11862

G. Kraft Food Global Inc.'s Response in Opposition to the Post-Confirmation Trust's Motion for Declaratory Judgment and Joinder in the Reclamation Trust's Motion to Enforce

Date: October 12, 2005

Docket No.: 11865

- H. Dean Food Company's (I) Joinder in Motion of the Reclamation Creditors' Trust to Enforce the Reorganization Plan and Confirmation Order and (II) Response in Opposition to Cross-Motion of the Post-Confirmation Trust for Declaratory Relief

Date: October 12, 2005

Docket No.: 11867

- I. Motion of the Post Confirmation Trust for Leave to File Consolidated Reply Brief in Response to Six Additional Briefs Filed in Support of RCT Motion to Enjoin the Post Confirmation Trust from Pursuing Claims and in Response to the PCT's Cross-Motion, and accompanying exhibit:

- (a) Consolidated Reply Brief of the Post Confirmation Trust in Response to Six Additional Briefs Filed in Support of the Motions of the Reclamation Creditors' Trust and Kemps LLC to Enjoin the Post Confirmation Trust's Pursuit of Claims and in Response to the Post Confirmation Trust's Cross-Motion

Date: October 17, 2005

Docket No.: 11910

- J. Third Amended Disclosure Statement in Support of Debtors' and Official Committee of Unsecured Creditors' Third Amended and Revised Joint Plan of Reorganization of Fleming Companies, Inc. and Its Filing Subsidiaries Under Chapter 11 of the United States Bankruptcy Code, with the following exhibits (not all of the exhibits to the Disclosure Statement):

- (9) Post Confirmation Trust Agreement (executed copy also included)
(12) Reclamation Creditors Trust Agreement (executed copy also included)

Date: May 28, 2004

Docket No.: 8269

- K. Order on Cross-Motion of the Post-Confirmation Trust for Declaratory Relief

Date: October 19, 2005

Docket No.: 11930

L. Transcript of Hearing held on October 19, 2005 before the Honorable Mary F. Walrath

Date: October 26, 2005

Docket No.: 11992

M. Notice of Appeal by Kemps LLC

Date: October 31, 2005

Docket No.: 12009

N. Order Confirming the Third Amended and Revised Joint Plan of Reorganization of Fleming Companies, Inc. and Its Filing Subsidiaries Under Chapter 11 of the United States Bankruptcy Code, with accompanying exhibit (not all of the exhibits to the Order):

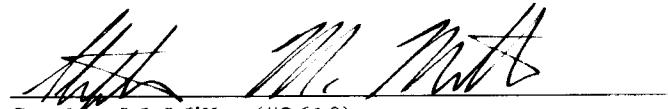
(a) Debtors' and Official Committee of Unsecured Creditors' Third Amended and Revised Joint Plan of Reorganization of Fleming Companies, Inc. and Its Filing Subsidiaries Under Chapter 11 of the United States Bankruptcy Code

Date: July 26, 2004

Docket No.: 9045

Dated: November 10, 2005

MORRIS, JAMES, HITCHENS & WILLIAMS LLP



Stephen M. Miller (#2610)

Douglas N. Candeub (#4211)

Thomas M. Horan (#4641)

222 Delaware Avenue

Wilmington, DE 19801

Telephone: (302) 888-6800

Telecopy: (302) 571-1750

Email: smiller@morrisjames.com

Email: dcandeub@morrisjames.com

Email: thoran@morrisjames.com

Attorneys for Kemps LLC (f/k/a Marigold Foods, LLC)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)	Chapter 11
)	
FLEMING COMPANIES, INC., <u>et al.</u> ,)	Case No. 03-10945 (MFW)
)	
)	Jointly Administered
Debtors.)	

AFFIDAVIT OF WILLIAM WELLER, PARALEGAL

STATE OF DELAWARE :
: SS:
NEW CASTLE COUNTY :

I, William Weller, certify that I am, and at all times during the service, have been an employee of Morris, James, Hitchens & Williams LLP, not less than 18 years of age and not a party to the matter concerning which service was made. I certify further that on November 10, 2005, I caused to be served:

**APPELLANT KEMPS LLC'S STATEMENT OF THE ISSUES AND
DESIGNATION OF ITEMS TO BE INCLUDED
IN THE RECORD ON APPEAL**

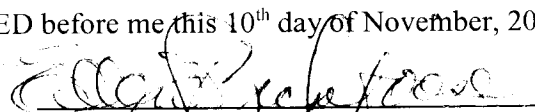
Service was completed upon the following parties in the manner as indicated.

Date: November 10, 2005



William Weller

SWORN AND SUBSCRIBED before me this 10th day of November, 2005.



NOTARY

My commission expires: _____

ELLEN J. ZICKEFOOSE
Notary Public, State of Delaware
My Commission Expires Feb. 21, 2007

VIA HAND DELIVERY

Laura Davis Jones, Esq.
Scotta E. McFarland, Esq.
Pachulski, Stang, Ziehl, Young, Jones
& Weintraub P.C.
919 North Market Street, 16th Floor
Post Office Box 8705
Wilmington, DE 19801
Facsimile: (302) 652-4400
(Co-Counsel for the PCT)

Steven K. Kortanek, Esq.
Michael W. Yurkewicz, Esq.
Klehr, Harrison, Harvey, Branzburg &
Ellers LLP
919 Market Street, Suite 1000
Wilmington, DE 19801
(Counsel to the Reclamation Creditors' Trust)

David Fournier, Esq.
Wilmer C. Bettinger, Esq.
Pepper Hamilton LLP
Hercules Plaza, Suite 5100
1313 Market Street
Post Office Box 1709
Wilmington, DE 19899
(Co-Counsel for the PCT)

Office of the United States Trustee
Joseph McMahon, Esq.
J. Caleb Boggs Federal Building
844 N. King Street, Suite 2313
Lockbox 35
Wilmington, DE 19801
(US Trustee)

Mary F. Calloway, Esq.
Klett Rooney Lieber & Schorling
1000 West Street, Suite 1410
Wilmington, DE 19801
(Co-Counsel for Kraft Foods Global, Inc.)

Jeffrey M. Schlerf, Esq.
The Bayard Firm
222 Delaware Avenue, Suite 900
Wilmington, DE 19801
(Co-Counsel for Dean Foods Company)

VIA HAND DELIVERY

Mark E. Felger, Esq.
Jeffrey R. Waxman, Esq.
Cozen O'Connor
Chase Manhattan Centre, Suite 1400
Wilmington, DE 19801
(Co-Counsel for Food Marketing Group, Inc.)

VIA FIRST CLASS MAIL

Mark J. Friedman, Esq.
DLA Piper Rudnick Gray Cary US LLP
6225 Smith Avenue
Baltimore, MD 21209
(Counsel to the Reclamation Creditors' Trust)

Kathy Patrick, Esq.
Gibbs & Bruns, LLP
1100 Louisiana Street, Suite 5300
Houston, TX 77002
(Co-Counsel for the PCT)

Daniel G. Hildebrand, Esq.
Mayer, Brown, Rowe & Maw LLP
71 South Wacker Drive
Chicago, IL 60606
(Co-Counsel to Kraft Foods Global, Inc.)

Richard L. Wynne, Esq.
Erin N. Brady, Esq.
Kirkland & Ellis LLP
777 South Figueroa Street
Los Angeles, CA 90017
Facsimile: (213) 680-8500
(Co-Counsel for the PCT)

Neil Berger, Esq.
Togut Segal & Segal LLP
One Penn Plaza
New York, NY 10119
(Co-Counsel for Food Marketing Group, Inc.)

Mark H. Ralston, Esq.
Munsch Hardt Kopf & Harr, P.C.
3800 Lincoln Plaza
500 N. Akard Street
Dallas, TX 75201
(Co-Counsel to Dean Foods Company)

FIRST CLASS MAIL

Janice L. Duban, Esq.
DLA Piper Rudnick Gray
Cary US LLP
203 N. LaSalle Street, Suite 1900
Chicago, IL 60601
(Co-Counsel for Reclamation Creditors' Trust)

Daniel J. Carrigan, Esq.
DLA Piper Rudnick Gray
Cary US LLP
1200 19th Street, NW
Washington, DC 20036
(Co-Counsel for Reclamation Creditors' Trust)